IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.839 OF 2006

In

NOTICE OF MOTION NO.8 OF 2006

In

SUIT NO.9 OF 2002

In

PETITION NO.997 OF 1999

Yolanda O. Ferrow : Appellant

(Orig.Defendant)

V/s.

Sunita D'Souza & Anr. : Respondents

...

Ms A.R.Lambay i/b. M/s.Lambay & Co., for the appellant.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : NOVEMBER 24, 2006.

P.C.

None appears for the appellant.

2. For want of appearance on behalf of the appellant, the appeal is dismissed in default.

3. After the order was dictated, Ms Lambay, the counsel

for the appellant, appeared and submitted that she missed the case by couple of minutes. She prays for restoration of the appeal.

4. For the afore-stated reason, we recall the order dismissing the appeal and restore the appeal to its number.

5. We heard the counsel for the appellant.

6. The counsel for the appellant did not dispute that in the consent terms dated 3.7.2003, there is no direction to Indian Bank. In that event, obviously, there was no justification in the order dated 23.12.2005 directing Indian Bank to carry out the directions contained in the order dated 23.7.2003 within ten days. To that extent, the impugned order cannot be faulted.

7. Under the consent terms, the appellant who was the defendant in Suit No.9 of 2002 in Petition No.997 of 1999, inter alia, has been held entitled to the amount lying in Bank accounts mentioned at item nos.10, 11, 12 and 13 of the Schedule to the petition. That entitlement is not in dispute. It is always open to the appellant to seek enforcement or entitlement as per the consent terms dated 3.7.2003 in appropriate proceedings.

8. With the aforesaid observations, appeal is disposed of.

R.M. LODHA, J.

S.A. BOBDE, J.